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Supreme Court, U.S.
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No. 04-1077

In The Supreme Court of the United States

KATHLEEN RAVEN and TONEY RAVEN,

Petitioners,

v.

COUNTRYWIDE HOME LOANS, INC., ANNE Y. GONZALES and JULIE TOWER,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal Second Appellate District, Division Three

BRIEF IN OPPOSITION

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QUESTIONS FOR REVIEW

1. Did the California Court of Appeal determine, on an independent and adequate state law ground, that the Ravens, who read and speak English, had no standing under California law to raise, on appeal from a class action settlement, the issue of whether class notice should have been sent to other class members in Spanish rather than English?

2. Do the Ravens have standing in this Court to vindicate other class members' rights, if any, to Spanish-language class notice?

3. Does the federal constitution require state courts to send class notice in languages other than English to class members known to read or speak those languages even when there is no evidence that class members could not understand English-language class notice?

PARTIES TO THE PROCEEDINGS

The caption contains the names of all the parties to this case.

CORPORATE DISCLOSURE STATEMENT

Countrywide Home Loans, Inc., is a corporation engaged in residential mortgage lending and servicing in its own name and under the fictitious business name America's Wholesale Lender. It is a wholly owned subsidiary of Countrywide Financial Corporation, a publicly held corporation whose shares trade on the New York Stock Exchange.

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BRIEF IN OPPOSITION

Respondent Countrywide Home Loans, Inc. ("Countrywide") respectfully submits that the Ravens' petition for a writ of certiorari should be denied for the reasons stated below.

JURISDICTION

This case was litigated in the California state courts. The Ravens claim to invoke this Court's jurisdiction under 28 U.S.C. § 1257(a). Countrywide submits that the Court has no jurisdiction as the case was decided below on independent and adequate state law grounds and did not draw into question the validity of any treaty or statute of the United States or of any state or adjudicate any claim of a title, right, privilege or immunity claimed under the Constitution, treaties or laws of the United States.

STATEMENT OF THE CASE

Purportedly acting on behalf of a class, plaintiffs Anne Gonzales and Julie Tower sued Countrywide in the Superior Court of the State of California for Los Angeles County, alleging that Countrywide overcharged its loan customers by marking up fees for certain third-party services such as credit reports.

After an initial round of discovery, plaintiffs and Countrywide engaged in lengthy settlement discussions and eventually entered into a proposed tentative settlement following a settlement conference mediated by a Los Angeles Superior Court judge.

The trial judge hearing the case, the Honorable Carolyn B. Kuhl, did *not* approve the initial tentative settlement. At a later court-mediated settlement conference, the parties hammered out terms more favorable to the alleged class. The revised settlement was again presented to Judge Kuhl. She tentatively approved the settlement and a form of class notice which she directed Countrywide to mail to class members.

Notice was mailed to class members as ordered. It was sent in English only. It explained the nature of the action, the principal terms of the proposed settlement, and class members' rights with respect to the action and settlement.

In response to the notice, Howard Strong originally appeared on his own behalf as an objecting class member, but later withdrew as an objector himself, choosing instead to present objections on behalf of petitioners, Kathleen and Toney Raven, who also claimed to be members of the class. Strong was granted access to the discovery materials in the case. He filed a lengthy brief in support of the Ravens' numerous objections to the settlement. Neither the Ravens nor anyone else then objected to the fact that class notice had been sent in English only.

At the settlement approval hearing on September 11, 2002, Strong presented oral argument in support of the Ravens' objections. Judge Kuhl stated she found no merit to most of the Ravens' objections but asked for supplemental submissions regarding two issues not involving class notice. Judge Kuhl scheduled a further settlement approval hearing on October 4, 2002.

In leaving the courtroom after the September 11 hearing, Strong stopped to talk with persons seated in the audience section of the courtroom. He learned they were Spanish-speaking class members who had appeared at the hearing in response to the class notice.

On October 2, 2002, Strong filed an additional brief on the Ravens' behalf, discussing the two issues on which Judge Kuhl had requested additional submissions and also raising, for the first time, an objection on the ground that class notice had not been sent in Spanish. No evidence was submitted regarding the number of class members who read or spoke Spanish only or whether any Spanish-speaking class members were unable to read the class notice or find someone to read and translate it for them.

At the second settlement approval hearing on October 4, 2002, Judge Kuhl rejected the Ravens' remaining objections, approved the settlement, and entered judgment dismissing the action. Regarding Spanish-language notice, Judge Kuhl observed:

> We now have this new issue with respect to whether the notice should have been sent in Spanish. While it may have been desirable in retrospect to send a Spanish-language version, it does appear that persons were able to get their questions resolved. We did not have any particular individual filing an objection on the basis of that individual not having been able to understand the notice without, for example, having to hire somebody.

The Ravens appealed, again raising a welter of objections, including their belatedly raised objection to English-only class notice. The Court of Appeal rejected all of the

Ravens' arguments and affirmed the judgment below. Pet. App., 23a.

As to Spanish-language class notice, the Court of Appeal noted:

> The Ravens . . . do not claim that they speak Spanish, that they are not proficient in English, or that they were harmed in any manner by the failure to provide notice in Spanish. Moreover, their timely intervention and objection to the settlement shows that the Ravens received and understood the written notice.

Pet. App., 9a.

Following *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 269 Cal. Rptr. 844, 852-53 (1990), the Court of Appeal held that since the Ravens had not shown they were harmed by English-only class notice, they had no standing to challenge the notice on that basis. Pet. App., 10a.

The Ravens' petition for review by the California Supreme Court was summarily denied on November 10, 2004. Pet. App., 24a.

REASONS FOR DENYING THE WRIT

I. No Issue Regarding *Devlin v. Scardelletti* Is Presented; The Case Was Decided On Independent State Law Grounds

The Ravens do not properly raise any issue regarding the scope of this Court's decision in *Devlin v. Scardelletti*, 536 U.S. 1 (2002).

This case arose and was litigated in California state court. State law governs procedure in state court. Applying California state law, the California Court of Appeal held that the Ravens had no standing, on appeal, to challenge aspects of a class action settlement that did not affect them individually. Pet. App., 9a-10a. That holding raises no federal question. 28 U.S.C. § 1257(a); Sup. Ct. Rule 10(b), (c).

Devlin involved a question of federal appellate procedure. The Court's resolution of that question was not based on constitutional principles or on statutes binding on the states. *Devlin* is not binding on state courts, which are free to adopt their own rules of appellate procedure. *See ASARCO, Inc. v. Kadish*, 490 U.S. 605, 617 (1989).

The Texas and Arkansas supreme court decisions, which the Ravens cite, do not hold otherwise, but instead cite *Devlin* as persuasive, not binding, authority on the state law issue of standing to appeal in state court. Persuaded by this Court's reasoning, the Texas Supreme Court adopted *Devlin*'s rule as a principle of Texas law. *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 754-55 (Tex. 2003). While acknowledging that *Devlin* undermined "one of the common-law foundations" of Arkansas' state law procedural requirement that class members must move to intervene if they wish to appeal, the Arkansas Supreme Court nevertheless applied that requirement and dismissed appeals by non-intervening class members. *Butt v. Evans Law Firm*, 351 Ark. 566, 98 S.W.3d 1, 7 (2003).

Moreover, the California Court of Appeal did not depart from *Devlin's* teaching in this case. The only issue in *Devlin* was "whether nonnamed class members who fail

to properly intervene may bring an appeal of the approval of a settlement." *Devlin*, 536 U.S. at 6; *see also id.*, at 14.

Devlin did not hold that a class member may challenge, on appeal, features of a class settlement or class action procedure which do not adversely affect him or her. Instead, this Court stated that prudential standing requirements, such as "the general prohibition on a litigant's raising another person's legal rights," were not at issue in *Devlin* because "[t]he legal rights he [the appealing class member] seeks to raise are his own. . . ." *Devlin*, 536 U.S. at 7.

Here, the Ravens *did* intervene and *were* allowed to appeal approval of the class settlement. Their appeal was not dismissed. It was decided on the merits, with a single exception. Pet. App., 23a.

The exception was the Ravens' contention that it was improper to give class notice in English only, not Spanish. The California Court of Appeal held that the Ravens lacked standing to raise that one issue because they were not adversely affected by English-only notice. Pet. App., 9a-10a. They did not claim they were not proficient in English. Their timely objections showed they understood the class notice though it was given in English only. They did not say they suffered any other harm from lack of Spanish-language notice. *Id.*, 9a.

As to Spanish-language notice, the Ravens sought to vindicate others' legal rights, not their own. *Devlin* did not abrogate the prudential standing requirement which generally bars litigation of others' rights. The California Court of Appeal correctly applied that rule, as a matter of state law, to prevent the Ravens from challenging the class notice which they could and did read.

There is no reason to grant certiorari in this case to confirm that the California Court of Appeal's unpublished decision correctly resolves this issue. Indeed, the Court lacks jurisdiction to do so, as the issue involves only an issue of state law governing state court appellate procedure, not any federal question.

II. There Is No Constitutional Right To Foreign Language Class Notice And The Ravens Have No Standing To Raise The Issue

The Ravens' petition also presents no issue appropriate for this Court's review as to whether a class member has a federal constitutional right to class notice in a language other than English.

California's courts never decided the Ravens' due process and equal protection claims regarding English-only class notice on the merits, having found that the Ravens lacked standing to raise them. Lack of standing is an independent and adequate state law ground for the California Court of Appeal's decision,[1] barring this Court's review of the constitutional issues which that court did not reach for procedural reasons. *Lee v. Kemna*, 534 U.S. 362, 375 (2002); *Coleman v. Thompson*, 501 U.S. 722, 729-30 (1991).

Review of the Ravens' due process and equal protection claims is also barred because the Ravens lack constitutional and prudential standing to raise those claims. The

[1] The case cited in the California Court of Appeal opinion shows that California applies this standing rule evenhandedly and consistently, not discriminating against or stifling federal claims preferentially. *See Rebney*, 269 Cal. Rptr. at 850-53 (1990).

Ravens cannot show injury in fact, the first of Article III's three irreducible minimum requirements of standing. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102-04 (1998). The Ravens do not claim they cannot read English. They timely objected and intervened, showing they understood the English-only notice. They do not say they have suffered any other injury by receiving class notice in English. Pet. App., 9a.

The Ravens also do not seek to vindicate their own rights, but the rights of other class members who, unlike the Ravens, read only Spanish, not English. The Ravens do not fall within any recognized exception to the prudential standing requirement that a plaintiff must normally assert his or her own legal rights, not those of third parties. *See Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 775 (1994); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 80 (1978); *Warth v. Seldin*, 422 U.S. 490, 499 (1975).

The Ravens have also failed to show that there is any conflict among lower court decisions on their second question presented. In fact, there is none. For decades, state and lower federal courts have agreed that there is no due process or equal protection right to notice in a language other than English.[2]

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[2] *Nazarova v. INS*, 171 F.3d 478, 483 (7th Cir. 1999); *Alonso v. Arabel, Inc.*, 622 So.2d 187, 188 (Fla. App. 1993); *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983), *cert. den.*, 466 U.S. 929 (1984); *Vialez v. New York City Housing Auth.*, 783 F. Supp. 109, 120 (S.D.N.Y. 1991); *Alfonso v. Board of Review*, 89 N.J. 41, 444 A.2d 1075, 1077, *cert. den.*, 459 U.S. 806 (1982); *Hernandez v. Department of Labor*, 83 Ill.2d 512, 416 N.E.2d 263, 267 (1981); *DaLomba v. Director of Div. of Employment Security*, 369 Mass. 92, 337 N.E.2d 687, 689-690 (1975);

(Continued on following page)

Nor have the Ravens established that their due process or equal protection issue is of sufficient importance to warrant this Court's review, particularly in a case, such as this one, where the trial court found there was no evidence that any class member had actually been prejudiced by English-only class notice.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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